



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Long-Term Care Administrators, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC95-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing Home Administrators
<b>Action title</b>	Periodic review
<b>Date this document prepared</b>	7/6/12

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The amendments are recommended as a result of a periodic review of Chapter 20 and are clarifying in nature or intended to make the requirements somewhat less restrictive. For example, the Board will allow credit towards completion of a nursing home administrator-in-training program for an applicant with years of service as a licensed assisted living administrator and will accept continuing education offered by a government agency.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On June 19, 2012, the Board of Long-Term Care Administrators concluded its periodic review of 18VAC95-10-10 et seq., Regulations Governing the Practice of Nursing Home Administrators and adopted minor changes by a fast-track action.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

18VAC95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators are promulgated by the Board of Long-Term Care Administrators under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary for the administration of a regulatory program.

#### **§ 54.1-2400 -General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

...

*6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The overall purpose of the amended regulation is clarification and ease of compliance with requirements for licensure and maintenance of licensure. Regulations governing nursing home administrators are essential to oversee the competency and practices of those in charge of facilities with the most vulnerable citizens. An amendment to the standards of conduct section is intended to provide specific grounds for disciplinary action for conduct that is clearly unprofessional to further protect the health, welfare and safety of these citizens.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The fast track process is being used because the changes are mostly technical and clarifying. There should be no controversy from these periodic review recommendations.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

The substantive provisions include acceptance of continuing education courses approved or offered by government agencies, credit of 1,000 hours towards an administrator-in-training program for an applicant who has served as an assisted living administrator and inclusion of general provisions of law as grounds for possible disciplinary action by the Board.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
*1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
*2) the primary advantages and disadvantages to the agency or the Commonwealth; and*  
*3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The advantage to the public is assurance that the Board will have sufficient grounds to discipline nursing home administrators who conduct their practices or obtain licensure in an unprofessional or illegal manner. Amendments will also clarify certain provisions and make the acquisition of continuing education more flexible and less costly. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) This action is in response to a periodic review of regulations.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements more restrictive than federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

There are no alternative regulatory methods that accomplish the purpose of these regulations.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$100) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and</p>
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	<p>sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional on-going costs to the state relating to these regulations.</p>								
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no costs to localities.</p>								
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The entities that are likely to be affected by these amendments would be applicants, licensed nursing home administrators, preceptors and persons enrolling in an administrator-in-training program.</p>								
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<table> <tr> <td>Nursing home administrators</td> <td>790</td> </tr> <tr> <td>Applicants for licensure – approximately</td> <td>100</td> </tr> <tr> <td>Preceptors</td> <td>223</td> </tr> <tr> <td>Administrators-in-training</td> <td>67</td> </tr> </table> <p>Most administrators are employed by small businesses or non-profit corporations, although there are some large corporate practices that operate nursing homes.</p>	Nursing home administrators	790	Applicants for licensure – approximately	100	Preceptors	223	Administrators-in-training	67
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<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There are no costs associated with the amended regulations. There may be a small cost savings by allowing CE credit for courses approved or offered by government agencies and by defining one hour of continuing education to be 50 minutes of coursework.</p>								
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>There may be benefit in a very small number of cases by the inclusion of general provisions of statute in the grounds for findings of unprofessional conduct.</p>								

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no viable alternatives to the proposed changes that meet the essential purpose, since requirements for licensure, renewal and standards of conduct are set in current regulations.

**Periodic review/small business impact review result**

***If this fast-track regulation is not the result of a periodic review/small business of the regulation, please delete this entire section.***

*If this fast-track regulation is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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- (1) The Notice of Periodic Review was published in the *Register of Regulations*, posted on Townhall and sent to the PPG list for the Board. Comment was requested from August 1, 2011 to September 1, 2011. There were no comments.
  - (2) The regulation is necessary for public protection since nursing home administrators oversee the facilities in which the most vulnerable citizens receive health care. It has been reviewed for clarity and amended for ease of understanding.
  - (3) The regulation for licensure is mandated by Chapter 31 of Title 54.1 of the Code of Virginia.
  - (4) The agency has not received complaints or comments; it does not overlap or duplicate other law or regulation.
  - (5) Amendments to this chapter have been promulgated 7 times from 2008 to 2012 to update or eliminate unnecessary requirements.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the family.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	Defines the words and terms used in regulation	<ul style="list-style-type: none"> <li>• Amends “accredited institution” to eliminate “or any diploma granting program approved by the Virginia Board of Nursing.” There is no such program for long-term care. Registered nurses with experience in long-term care can receive hours of credit toward completion of an administrator-in-training program. There will be no impact of this amendment.</li> <li>• Amends “hour” to mean 50 minutes rather than 60 minutes for continuing education credit. Programs typically include a 10-minute break in a 60 minute program and count it as “one hour.”</li> <li>• Deletes “state examination” because the Board no longer has such an exam.</li> </ul>
175	Specifies the hours and qualifications for continuing education as a condition for renewal of licensure	In subsection B, adds a “government agency” as an entity that can approve or offer a continuing education program. The amendment will allow administrators who attend training offered by state or federal agencies to count such courses as continuing education. The amendment will have a positive impact in the availability of CE.
220	Sets out the qualifications for initial licensure	Amendments conform the language to the term “accredited institution” which is defined in section 10.
300	Sets out the qualifications for administrator-in-training approval	Amendments conform the language to the term “accredited institution” which is defined in section 10.
310	Sets out the required hours for a AIT training program	<p>An amendment will grant up to 1,000 hours of the required 2,000 for an applicant who has been employed as the licensed administrator of an assisted living facility for four of the past five years.</p> <p>The impact of this change may be significant for a few persons who have been in long-term care in assisted living and now wish to qualify for a nursing home administrator license.</p>
470	Provides grounds for disciplinary action or refusal to license	The current cause for action, “failure to comply with any regulations of the board” is too limiting and does not offer the Long-Term Care Board the same grounds available to other boards within the Department that can cite the general statutory provisions in Chapters 1 and 24 of Title 54.1. For example, § 54.1-111 has a listing of unlawful acts for which a person may be criminally prosecuted. In the case of a licensee of the Board, it would be more appropriate to take disciplinary action if there is evidence that the person has materially misrepresented facts in an application for licensure or willfully refused to

		<p>furnish the Board with records in the course of an investigation. There may only be an impact of the amendment in a small number of cases in which the Board did not have specific grounds to cite for disciplinary action.</p>
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